EXPLANATORY MEMORANDUM TO

THE DIVORCE & DISSOLUTION ETC (PENSION PROTECTION FUND) REGULATIONS 2011

2011 NO. 780

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Divorce and Dissolution etc (Pension Protection Fund) Regulations 2011 make provision in relation to court orders for sharing or attachment of pension compensation on divorce or dissolution of a civil partnership, nullity of a marriage or a civil partnership or separation (including provision relating to such orders following proceedings overseas). This provision corresponds to that made in relation to court orders for sharing or attachment of pensions and covers:

(a) the approach to changes of circumstances affecting orders for attachment of pension compensation (for example, a remarriage), including the giving of notices, the person to whom the Board of the Pension Protection Fund should make a payment and the circumstances when the Board is discharged from liability under those orders and

(b) a period of suspension during which pension compensation sharing orders and the variation of such orders cannot take effect, to allow for the possibility of appeal.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The context for this instrument is the commencement of provisions in the Pensions Act 2008 which enable the making of orders for attachment or sharing of pension compensation as between spouses or civil partners on divorce, dissolution, etc. Those provisions are being commenced on 6th April 2011, together with three sets of regulations providing for their implementation. The Department for Work and Pensions is responsible for two of those sets of regulations - the Pension Protection Fund (Pension Compensation Sharing & Attachment on Divorce etc) Regulations 2011 (S.I. 2011 No. 731) and the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2011 (S.I. 2011 No. 726) – which concern the operation of the Pension Protection Fund; and the Ministry of Justice for this instrument, which concerns the effect of certain events in relation to the court's orders and the period

during which pension compensation sharing orders and variation of those orders cannot take effect to allow for an appeal. The necessary rules of court for applications for pension compensation attachment and sharing orders are contained in the Family Procedure Rules 2010 (SI 2010/2955), which will also come into force on 6th April 2011.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Pension Protection Fund ("PPF") was established by the Pensions Act 2004 ("the 2004 Act") and commenced operation on 5 April 2005. The PPF is a compensation scheme to provide compensation, in place of a pension, to pension members whose occupational pension schemes cannot afford to cover their liabilities (to the level of pension compensation that would be paid by the PPF) due to an 'insolvency event'[1]. Previously, if a business went into insolvency, anyone not yet in receipt of their pension from the company's scheme would lose most or all of their pension fund. In the vast majority of cases, the PPF will pay out pension compensation of between 90% and 100%[2] of the pension that would have been due to the member prior to the insolvency event, if the scheme cannot afford to cover its members' funds to that level.

7.2 The PPF is administered by the PPF Board. The Board is a statutory corporation that falls under the responsibility of the Secretary of State for Work and Pensions. It is funded by a levy charged to all pension schemes that would be eligible to be considered for entry into the PPF following an insolvency event.

7.3 When an occupational scheme suffers the prescribed insolvency event, it enters into an 'assessment period'. This is a period of not less than one year, during which the assets of the scheme are examined to see if it is possible for the scheme to cover its liabilities to the levels that the PPF would pay in compensation if it were to continue as a 'closed' scheme. If this were not possible, the scheme would be

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1 Section 121 of the 2004 Act and the Pension Protection Fund (Entry Regulations) 2005 (S.I. 2005/590) set out what constitutes an insolvency event (for example, the making of an administration order, or appointment of an administrative receiver, or the passing of a resolution for winding up or a making of a winding up order, in relation to a company)

2 A cap is set on annual pension payout by the PPF Board. This cap is recalculated every year. The current cap is £29,748.68 per annum.

'transferred' into the PPF. A small number of schemes leave the assessment period before the one-year statutory minimum is up because the scheme is 'rescued', for example if the original employers continue as a going concern. During the assessment period the scheme continues to operate as a pension scheme but no longer accepts premiums or new members, and any benefits that are paid during this time would be paid at the pension compensation rate.

7.4 Because pension compensation from the PPF is not a pension, none of the legislation in place in relation to pensions would provide for sharing or attachment orders between spouses or civil partners on divorce or dissolution, etc., to be made in respect of it. Furthermore, any such pension orders made in respect of a pension prior to the scheme transferring into the PPF could not be implemented against compensation, although provision was made in the 2004 Act for any orders made against a pension, including any made during the assessment period but not implemented prior to the scheme's transfer into the PPF, to be implemented against the relevant compensation.[3]

7.5 The Pensions Act 2008 made provision to enable rights to pension compensation to be treated in the same way as pension benefits. It is as part of the package of regulations and rules of court to implement these provisions that this instrument is being made, with the aim of enabling the court to consider the full value of rights to pension compensation, make orders accordingly and to assist the PPF in discharge of its liability in respect of any orders made in respect of pension compensation. This instrument is based on the corresponding regulations in relation to pension attachment and sharing, namely the Divorce etc (Pensions) Regulations 2000 (S.I. 2000 No. 1123) which cover orders as between spouses on divorce, etc., and the Dissolution etc (Pensions) Regulations 2005 (S.I. 2005 No. 2920), which cover orders as between civil partners on dissolution, etc.. It covers those aspects of the corresponding regulations in relation to pension attachment and sharing orders which are also relevant for pension compensation attachment and sharing orders. It accordingly does not cover: (a) elements relating to the valuation of a party's compensation rights (which are dealt with for the PPF under the regulations for which the DWP is responsible, mentioned in paragraph 4.1, and so far as necessary on the court side in the Family Procedure Rules 2010)), or (b) the impact of transfers between schemes by the party with pension rights after orders have been made (which are not applicable in the case of the PPF)).

- ***Consolidation***

7.6 This instrument in itself makes consolidated provision covering both orders as between spouses and orders as between civil partners. There are no immediate plans to consolidate the corresponding regulations relating to pension sharing and attachment.

8. Consultation outcome

[3] The exception to this is Death in Service benefit lump sum orders as there is no such thing as 'service' with regard to the PPF. Any such orders would lapse when a scheme enters the 'assessment period'.

8.1 A small scale technical consultation was undertaken on the draft Regulations and proposed new form during October 2010. The draft regulations were sent to relevant organisations and individuals.

8.2 One individual response was received from an expert 'pensions on divorce' lawyer who was content.

9. Guidance

9.1 The Regulations will be published on the Ministry of Justice website. All relevant forms required by applicants will be published and will be available to be downloaded from the same website.

9.2 Training for court staff and the judiciary will be provided in the run up to implementation.

10. Impact

10.1 This Instrument will have no direct impact on the Private or Voluntary Sector. In terms of indirect impact for business, legal practitioners will need to understand the new powers and be able to apply them to relevant cases, as for any other legislative change, although this will be negligible as the powers mirror those already available with regard to pensions.

10.2 This Instrument will have negligible impact on the Public Sector.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business, in particular to legal practitioners.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to raise awareness of the implementation of the Regulations by placing the Regulations on the Ministry of Justice website along with a introductory note.

12. Monitoring & review

12.1 Ministry of Justice along with DWP and PPF will monitor and review the operation of these Regulations.

13. Contact

Diana Roy at the Ministry of Justice Tel: 202 3334 3137 or email: diana.roy@justice.gsi.gov.uk can answer any queries regarding the instrument